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असाधारण

EXTRAORDINARY

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PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF FINANCE

(Department of Economic Affairs)

(Office of the Controller of Capital Issues)

NOTIFICATIONS

New Delhi, the 1st February 1969

THE CAPITAL ISSUES (EXEMPTION) ORDER, 1969

S.O. 558.—In exercise of the powers conferred by sub-section (1) of section 6 of the Capital Issues (Control) Act, 1947 (29 of 1947), and in supersession of the Capital Issues (Exemption) Order, 1961 and the Capital Issues (Exemption) Order, 1966, published with the notifications of the Government of India in the Ministry of Finance (Department of Economic Affairs) No. S.O. 1234, dated the 23rd May, 1961 and No. G.S.R. 1705, dated the 4th November, 1966, respectively, the Central Government hereby makes the following order, namely :—

1. **Short title and commencement.**—(1) This order may be called the Capital Issues (Exemption) Order, 1969.
- (2) It shall come into force on the date of its publication in the Official Gazette.
2. **Interpretation.**—In this order, unless the context otherwise requires,—
 - (a) “Act” means the Capital Issues (Control) Act, 1947 (29 of 1947);
 - (b) “banking institution” means any institution carrying on the business of banking to which the Banking Regulation Act, 1949 (10 of 1949), applies whether wholly or in part;

(c) "consideration involved" means,—

- (i) in relation to the issue of securities without a nominal value, the amount to be raised by the issue of securities, and, in the case of securities with a nominal value, the sum of the total nominal value and of any premium, entrance fee or other payment which the person subscribing to the securities may be called upon to pay; and
- (ii) in relation to the borrowing of money, the amount of money to be borrowed;
- (d) "insurance company" means any insurer being a company which may be wound up under the Companies Act, 1956 (1 of 1956);
- (e) "banking company", "insurer" and "provident society" shall have the meanings respectively assigned to them in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949), and in clause (9) of section 2 and sub-section (1) of section 65 of the Insurance Act, 1938 (4 of 1938);
- (f) words and expressions used in this order and not defined but defined in the Act, shall have the meanings respectively assigned to them in the Act.

3. Certain issue of securities exempted from certain provisions of the Act.—(1) The following issue of securities shall be exempt from the provisions of sections 3, 4 and 5 of the Act, namely, the issue of securities irrespective of the value of consideration involved by—

- (i) a private company as defined in section 3 of the Companies Act, 1956 (1 of 1956);
- (ii) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), provided that no portion of the issue of securities is made to the general public;
- (iii) a banking company or an insurance company or a provident society incorporated as a company:

Provided that if the total issue of capital in a period of 365 days exceeds Rs. 25 lakhs, the above-mentioned companies shall, as soon as the issue has been made, send a report thereon in duplicate, to the Controller of Capital Issues, to the extent applicable, in the form specified in the Schedule annexed to this order, to be followed by reports as on the 31st March, the 30th June, the 30th September and the 31st December until the securities have been got fully paid-up, together with a copy of the audited and published balance sheet immediately after the securities have been fully paid-up.

4. Issue of securities by public limited companies wholly exempted from certain provisions of the Act.—The following issues by public limited companies shall be exempt from the provisions of sections 3, 4 and 5 of the Act, namely:—

- (i) the issue of securities by a public limited company and all transactions relating to such securities issued by any such company, if the value of the consideration involved in such issue together with the value of the consideration involved in any previous issue of securities made by such company within the twelve months immediately preceding such issue, does not exceed twenty-five lakhs of rupees;

Explanation.—The aforesaid limit of twenty-five lakhs of rupees shall have reference to the total value of all the issues and transactions during any period of twelve months and not to the value of each individual issue or transaction or to any part thereof, or to the value of consideration received from any single party;

- (ii) the issue of securities for the purpose of sub-dividing any securities into securities of any smaller denomination or consolidating any securities into securities of any larger denomination:

Provided that in either case the transaction does not involve any increase in the total value of the paid-up capital of the company and that the securities sub-divided or consolidated are of the same kind:

- (iii) the issue of securities in a case where,—

- (a) an amalgamation of two or more companies other than banking companies has been notified by the Central Government by an order under section 396 of the Companies Act, 1956 (1 of 1956); or
- (b) an amalgamation of two or more banking companies has been approved by the Reserve Bank of India under section 44A of the Banking Regulation Act, 1949 (10 of 1949), and the total paid-up capital of the amalgamated

company or the amalgamated banking company after the issue of securities under this provision is not greater than the total paid-up capital of the amalgamating companies or the amalgamating banking companies as the case may be;

- (iv) the loans granted or debentures taken up or bonds or promissory notes issued by the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964), the Industrial Finance Corporation established under the Industrial Finance Corporation Act, 1948 (15 of 1948), a State Financial Corporation established under the State Financial Corporations Act, 1951 (63 of 1951), the Madras Industrial Investment Corporation Ltd., the Industrial Credit and Investment Corporation of India Ltd., the National Industrial Development Corporation of India Ltd., the Shipping Development Fund Committee, the Life Insurance Corporation of India, the Rehabilitation Industries Corporation of India Ltd., a State Electricity Board constituted under the Electricity (Supply) Act, 1948 (54 of 1948), the State Trading Corporation of India Ltd., or the Minerals and Metals Trading Corporation of India Ltd.;
- (v) the guarantees given by the Industrial Development Bank of India under clause (e) or clause (f) or clause (g) of sub-section (1) of section 9 of the Industrial Development Bank of India Act, 1964 (18 of 1964) or by the Industrial Finance Corporation under clause (b) of sub-section (1) of section 23 of the Industrial Finance Corporation Act, 1948 (15 of 1948), or by the Central Government or a State Government under sub-section (2) of the said section 23 of the Industrial Finance Corporation Act, 1948 (15 of 1948), or any other guarantees given or furnished by any other body or institution specified in sub-clause (iv);
- (vi) the issue and acceptance of securities other than debentures, being an issue made by a company in the ordinary course of its business and solely for the purpose of that business, to a banking institution or its nominee, in respect of advances or overdrafts, or guarantees from time to time granted or furnished or to be granted or furnished by such banking institution;
- (vii) instruments executed by the Central Government or a State Government guaranteeing advances or overdrafts referred to in sub-clause (vi) or guaranteeing the payments due to a banking institution arising out of any guarantee furnished by that banking institution;
- (viii) the issue and acceptance of debentures, being an issue made by a company in the ordinary course of its business and for the purposes of that business to a banking institution or its nominee, if the total value of such debentures together with the value of any previous issue of such debentures made by such company within the twelve months immediately preceding such issue does not exceed twenty-five lakhs of rupees;
- (ix) third party guarantee on behalf of a company in respect of—
 - (a) the loans granted or debentures taken up by the institutions specified in sub-clause (iv); and
 - (b) the advances, overdrafts or guarantees, referred to in sub-clause (vi) granted or furnished or to be granted or furnished by a banking institution, an insurance company, managing agents of a company, or the managing director or director of a company;
- (x) charges made under mining leases by the lessees in favour of the lessors charging the assets of a company for the due payment of rents and royalties reserved by the instrument of lease.

5. Issue of securities by public limited companies exempted from certain provisions of the Act, subject to observance of criteria.—The issue of securities for consideration exceeding rupees twenty-five lakhs proposed to be made by a public company, including a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) which proposes to make an offer of the securities to the public by prospectus, shall be exempt from the provisions of sections 3, 4 and 5 of the Act:

Provided that—

- (i) the issue does not comprise or include preference shares carrying rights of participation over and above the fixed amount or an amount calculated at a

fixed rate in the profits or conversion into equity shares or debentures carrying right of conversion into equity shares or payable to bearer;

- (ii) as a result of the proposed issue, the equity of the company is not less than one-half of its debt;

Explanation 1.—"debt", includes all borrowings repayable not earlier than five years from the date of borrowing (whether debentures, loans or deferred payments including interest thereon, for the purchase of capital equipment) and preference shares redeemable not later than twelve years from the date of promoters, directors and their friends is not less than fifteen per cent of the issue;

Explanation 2.—"equity" includes paid-up equity share capital, share premium, free reserves, irredeemable preference shares and preference shares redeemable not earlier than twelve years from the date of issue;

- (iii) as a result of the proposed issue the total paid-up preference share capital will not be more than one-third of the total paid-up equity share capital;
- (iv) where the securities issued by the company, or a part thereof, is for the purpose of taking over an existing business or asset, the take-over is effected at the book value of such business or asset;
- (v) where a public company is formed on conversion of a private company or for taking over the business of a partnership or a proprietorship or an association of persons, the consideration for issue of securities by the public company to the shareholders of such private company, or to the members of such partnership, proprietorship or an association of persons, as the case may be, for taking over the same as a going business and any part of the assets of such private company, partnership, proprietorship or an association of persons, does not exceed the book value of the net assets so taken over of the private company, partnership, proprietorship or an association of persons;
- (vi) no securities are issued in consideration of revaluation of assets or creation of any intangible or fictitious assets;
- (vii) the issue price of the securities to be issued is at par and not at a premium or discount;
- (viii) any offer of securities for public subscription is such as to make the securities eligible for listing on a recognised stock exchange;
- (ix) the rate of interest on debentures or the rate of dividend on preference shares does not exceed the rate notified by the Central Government from time to time as applicable to such securities and the timing of the offer of securities proposed to be issued is in conformity with the directions notified by the Central Government at the beginning of each calendar year;
- (x) where the issue of equity capital involves an offer for subscription by the public for the first time, the value of equity capital subscribed privately by the promoters, directors and their friends is not less than fifteen per cent of the total issued equity capital, if it does not exceed one crore of rupees, twelve-and-a-half per cent, if it does not exceed two crores of rupees, and ten per cent, if it is in excess of two crores of rupees;
- (xi) in a public offer of shares no reservation is to be made in favour of any person or class of persons except with the prior approval of the Controller of Capital Issues;
- (xii) securities issued in the form of debentures or bonds shall be payable to registered holders only;
- (xiii) if the consideration for the issue of securities is proposed to be got fully paid-up by making calls, such calls shall be made on a uniform basis on all securities falling under the same class and completed within a period of five years from the date of the offer:

Provided further that—

- (i) a company satisfying the criteria under the above proviso shall file with the Controller of Capital Issues a statement of its capital issue proposals in the form specified in the Schedule annexed to the Capital Issues (Application for Consent) Rules, 1966, notified under No. G.S.R. 600,

dated the 29th March, 1966, together with the enclosures mentioned therein, **except the treasury chalan, at least 30 days before a prospectus is issued, a statement in lieu of prospectus is filed or any offer relating to the whole or part of the issue is made;**

Explanation.—The statement of proposals referred to in this proviso need not be accompanied by any fee;

- (ii) an acknowledgement in receipt of the statement of proposals so filed has been obtained from the Controller of Capital issues;
- (iii) the company shall state in a prominent place in its prospectus or statement in lieu of prospectus or letter of offer to its shareholders, as the case may be that the issue of securities is being made in terms of the provisions of this order;
- (iv) as soon as the issue of capital has been made, a report thereon is sent in duplicate to the Controller of Capital Issues, to the extent applicable, in the form specified in the Schedule annexed to this order, to be followed by reports as on the 31st March, the 30th June, the 30th September and the 31st December until the securities have been got fully paid-up, together with a copy of the audited and published balance sheet immediately after the securities have been fully paid-up.

6. Exemption of public offer for sale of certain securities from certain provisions of the Act.—The following shall be exempt from the provisions of section 4 of the Act in so far as such provisions relate to any documents publicly offering for sale, namely:—

- (a) any security issued in the State before the 17th May, 1943; and
- (b) any security issued outside the State before that date, being a security of a class of which no further issue has been made after that date by or on behalf of the same company without the consent or recognition of the Central Government.

7. Exemption of certain securities, the issues of which have been regularised.—The following shall be exempt from the provisions of sub-section (2) of section 5 of the Act, namely:—

- (a) securities the issue of which has involved a contravention of sub-sections (1), (2) and (3) of section 3 or section 4 of the Act, if such contravention has been condoned under the provisions of sub-section (2) of section 6 of the Act; and
- (b) any security transferred by the operation of the law of inheritance or succession or by the decree of a competent court.

8. Saving.—Nothing contained in this order:—

- (i) shall apply to any issue of securities irrespective of the amount involving the capitalisation of profits or reserves for the purpose of issuing additional capital or conversion of partly paid-up shares into fully paid-up shares or for the increase of the paid-up value or par value of shares already issued by any company private or public including a banking company or an insurance company, or a provident society incorporated as a company;
- (ii) shall affect or be deemed to affect the power of the Central Government to modify in the public interest any proposal for the issue of securities by a public company desiring to avail itself of the exemption under this order;
- (iii) shall be deemed to exempt any public company from obtaining the consent of the Central Government under the Act in respect of issues of all securities the terms of which, for whatsoever reasons, do not satisfy the provisions of clause 5.

9. Clarification.—It is hereby clarified that all issues of securities not covered by this order and, in particular, the following issues of securities are not exempt from the provisions of sections 3, 4 and 5 of the Act, namely:—

- (i) bonus issues as referred to in clause 8(1) of this order by any company whatsoever—private company, banking and insurance company, Government company and public company—irrespective of the amount of consideration involved;
- (ii) issue of preference shares, carrying participating or conversion rights;

- (iii) issue of debentures carrying conversion rights or issue of debentures not payable to registered holders;
- (iv) issue of securities at a premium or discount;
- (v) issue of securities involving relaxation of any or all the conditions mentioned in clause 5 above.

SCHEDULE

(See clauses 3 and 5)

Report to be sent in Duplicate to the Controller of Capital Issues

1. Name of the Company _____
2. Amount of Issue—(i) Equity shares Rs. _____ (ii) Preference Shares Rs. _____ (iii) Debentures Rs. _____ (iv) Loans etc. Rs. _____

3. Issue made by the Company—Type of Issue	Date of Issue	Amount	Type of Security
(a) 'Rights' issue* other than Bonus	_____	_____	_____
(b) Firm Allotments*	_____	_____	_____
(c) Offer to the Public* by prospectus	_____	_____	_____
(d) Loan etc.	_____	_____	_____

Amount underwritten :—

Name of the underwriter	Type of Security underwritten	Amount
_____	_____	_____

5. Applications received in respect of offer of shares made to the General public by prospectus (two copies of which should be enclosed) under item 3(c) above and the result of subscription.

	Kind of security	No. of Application	No. of shares	Amount of Subscription
(i) Applications received in respect of offer to the public	_____	_____	_____	_____
(ii) Applications rejected	_____	_____	_____	_____
(iii) Valid applications considered from the public for allotment	_____	_____	_____	_____
(iv) Allotments made in respect of (iii) above	_____	_____	_____	_____
(v) Allotments to underwriters under underwriting obligations other than firm allotments	_____	_____	_____	_____

*The information may be given security-wise e.g. Equity shares, Preference shares, Debentures.

6. Issues taken up and/or allotments made for the period under reports.

Particulars of allotment*	Date(s) of allotment	Equity shares		Preference shares		Debenture
		Subscribed	Paid-up	Subscribed	Paid-up	
(i) "Right" shares other than Bonus shares.						
(a) Existing residents						
(b) Existing non-residents						
SUB-TOTAL.						
(ii) Firm Allotments.						
(a) Foreign Collaborators						
(b) Promoters, Directors, their friends and relatives						
(c) Financial Institutions**						
(d) Central and State Governments						
(e) Brokers & underwriters other than item (iii)(d) below.						
(f) Existing shareholders and others						
SUB-TOTAL						
(iii) Allotment of shares offered to the general public by prospectus.						
(a) Directors, Mg. Agents, Secretaries & Treasurers						
(b) Financial Institutions**						
(c) Central & State Govts.						
(d) Underwriters under underwriting obligation						
(e) Cos. registered under the Companies Act						
(f) General Public						
GRAND TOTAL (i), (ii) & (iii)						
(iv) Loan Capital.						
Date of creation of charge on the assets and Amount of charge.						
7. Total capital raised up to the end of this report:—						
Equity shares		Subscribed	Paid-up	Debentures	Loan etc.	
Preference shares :						
Signature of the person submitting the report.						

*Only the relevant particulars as are applicable to the company need be given.

**Names of the Financial Institutions e.g. Life Insurance Corporation of India, I.F.C. of India, I.C.I.C.I. and S.F.C.'s, Investment or Unit trusts, etc. should be separately indicated.

NOTE.—(i) The reports are to be made in respect of capital issued, in accordance with the Statement of proposals. The reports should be filed at the end of each quarter as at 31st March, 30th June, 30th September and 31st December until the capital has been fully subscribed and paid-up. (ii) A copy of the Balance Sheet and Profit and Loss Account of the accounting year in which the capital has been fully subscribed and paid-up, should be filed. Subsequent reports, however, need not be sent if the capital issued has been fully subscribed and paid-up. Subsequent to the filing of the Balance Sheet and Profit and Loss Account no report need be sent.

[No. F. 2(6)-CCI/66.]

S.O. 559.—In pursuance of sub-clause (ix) of clause 5 of the Capital Issues (Exemption) Order, 1969, published with the notification of the Government of India in the Ministry of Finance (Department of Economic Affairs) No. S.O. 558, dated the 1st February, 1969, the Central Government hereby notifies the following rates for the purposes of the said sub-clause, namely :—

- (1) the rate of dividend on preference shares to be issued under the authority of the said Order shall not exceed 9.5 per cent per annum (free of company's tax but subject to deduction of taxes at prescribed rates);
- (2) the rate of interest on debentures, bonds, etc., to be issued under the authority of the said Order shall not exceed 7.75 per cent per annum.

[No. F. 2(6)-CCI/66.]

S.O. 560.—In pursuance of sub-clause (ix) of clause 5 of the Capital Issues (Exemption) Order, 1969, published with the notification of the Government of India in the Ministry of Finance (Department of Economic Affairs) No. S.O. 558, dated the 1st February, 1969, the Central Government hereby directs that during the calendar year 1969, no offer of securities of a nominal value of Rs. 250 lakhs or above (exclusive of the amounts to be subscribed by the Government and non-residents) by a public limited company shall be made or kept open during the period 1st June to 31st August (both days inclusive without obtaining the prior permission of the Central Government as to the timing of the offer.

[No. F. 2(6)-CCI/66.]

M. K. VENKATACHALAM,
Controller of Capital Issues.